

Appl. No. 10/771,079  
Reply to Office Action of March 7, 2005

### REMARKS/ARGUMENT

#### Status of the Claims

Claims 1-33 are canceled.

Claims 34-40 are currently amended.

New claims 41-45 are added.

Claims 34-45 are pending.

#### Rejection of Claims Under 35 U.S.C. § 102(e)

In the Office Action, claims 33, 34 and 36-40 are rejected under 35 U.S.C. § 102(e) as anticipated by US 6,739,414 (*Brookey '414*). It is said that *Brookey '414* teaches a servicing fluid which comprises an aqueous liquid as a continuous phase, one or more surfactants within the scope of the present invention, aphrons, and a viscosifier. The fluid is said to further contain a dilatant such as polyvinyl alcohol. The Examiner suggests that polyvinyl alcohol would inherently act as an aphron stabilizer. With respect to claims 37-40, it is said that polyvinyl alcohol at the levels taught in col. 8, l. 14 of *Brookey '414* would provide the aphrons with a half-life within the scope of those claims.

In reply, Applicants have canceled claim 33. With respect to claim 34 as currently amended, Applicants traverse this rejection and would respectfully point out that no suggestion has been made in the Office Action, and *Brookey '414* does not teach, the specific combination of betaine or alkyl ether sulfate with polyvinyl alcohol in a drilling or servicing fluid. Accordingly, claim 34 is believed to be allowable as currently rewritten in independent form incorporating the limitations of now-canceled parent claim 33. The amendment to claim 34 is supported in the specification at paragraph [0033], for example. Claim 34 is also similar to original claim 5 (canceled), which was indicated as being substantially allowable in the first Office Action (dated September 27, 2004).

The dependencies of claims 36-40 are currently changed from now-canceled claim 33 to claim 34. These claims also distinguish over *Brookey '414* for at least the same reason as claim 34.

#### Double Patenting

In the Office Action, claims 33-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 16-22 of co-pending Application No. 10/842,002. As the instant application is the earlier-filed of the two applications in question, pursuant to MPEP § 804 (I)(B) Applicants respectfully request that this

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provisional double patenting rejection be withdrawn when the other rejections and objections have been resolved and one or more claims are deemed allowable in the present application.

A *Notice of Related Application* identifying the instant application is being filed concurrently herewith in Application No. 10/842,002, in accordance with MPEP § 2001.06(b) and 35 U.S.C. § 156.

**New Claims**

Applicants note that claim 35 is not rejected on any grounds other than the above-mentioned provisional obviousness-type double patenting, and is believed to be free of the prior art and in condition for allowance as rewritten in independent form. Therefore, new claims 41-45, which depend from claim 35, are now introduced to better ensure coverage of specific embodiments to which Applicants are entitled. New claims 41-45 are similar to original claims 36-40, except for their dependencies.

**Examiner Interview Summary**

On March 2, 2005, Examiner Philip C. Tucker called the undersigned representative, who spoke briefly with the Examiner regarding his withdrawal of the allowance of claims 33-40. The possibility of incorporating the limitations of claim 35 into claim 33 in order to distinguish over *Brookey '414* was raised by the Examiner. No agreement was reached at that time, and the Examiner indicated that the matter would be further considered and a non-final Office Action would be issued soon.

**Conclusion**

No new matter is introduced by way of these amendments, and all of the subject matter of the claims as currently presented is supported by the original claims and/or the specification. For the reasons stated above, all claims are in condition for allowance and such favorable action is respectfully requested. Accordingly, reconsideration of the application and withdrawal of the rejections in light of the foregoing amendments and remarks are respectfully requested.

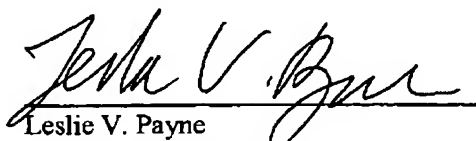
In this Response, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art, which have yet to be raised, but which may be raised in the future. This is believed to be a full and

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complete response to the Office Action of March 7, 2005. If any item in the Office Action has been overlooked or is deemed to be incompletely addressed, Applicants respectfully request the opportunity to respond. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore. If any fee is due, please appropriately charge such fee to Deposit Account Number 03-2769 (ref. 2223-04401) of Conley Rose, P.C., Houston, Texas. If the Examiner has any questions or comments or otherwise feels it would be helpful, he is encouraged to telephone the undersigned at (713) 238-8044.

Respectfully submitted,



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